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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 797.

STATE OF MISSOURI and ROY McKITTRICK, as Attorney General of Missouri, Petitioners,

vs.

ST. LOUIS UNION TRUST COMPANY, Trustee Under Indenture of Trust Made February 14, 1921, by Madge Barney Blake,

ST. LOUIS UNION TRUST COMPANY, Trustee Under Indenture of Trust Made January 11, 1929, by Madge Barney Blake,

ST. LOUIS UNION TRUST COMPANY, CHARLES B. MALOY and CLARENCE E. MALOY, Trustees Under Indenture of Trust Made May 20, 1935, by Madge Barney Blake, Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Missouri.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

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On Petition for Writ of Certiorari to the Supreme Court of the State of Missouri.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

OPINION BELOW.

The opinion of the Supreme Court of Missouri (R. 116) is not yet officially reported, but is unofficially reported in 155 S. W. (2d) 107.

JURISDICTION.

The judgment of the Supreme Court of Missouri (R. 115) was entered on July 21, 1941. A motion for rehearing was filed on July 31, 1941 (R. 126), and overruled on October

30, 1941 (R. 139). The petition for writ of certiorari was filed on December 12, 1941. The petitioners seek to invoke the jurisdiction of this court under Section 237 (b) of the Judicial Code [28 U. S. C. A., § 344 (b)].

STATUTE INVOLVED.

The statute here involved is Section 576, R. S. Mo. 1929, which reads as follows (applicable portion being italicized):

> "Sec. 576. Reciprocity.—The tax imposed by this article in respect of personal property (except tangible personal property having an actual situs in this state) shall not be payable (a) *if the transferor at the time of his death was a resident of a state or territory of the United States, or of any foreign country, which at the time of his death did not impose a transfer tax or death tax of any character in respect of property of residents of this state (except tangible personal property having an actual situs in such state or territory or foreign country)*, or, (b) if the laws of the state, territory or country of residence of the transferor at the time of his death contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein), provided the state, territory or country of residence of such nonresidents allowed a similar exemption to residents of the state, territory or country of residence of such transferor. * * *" (Laws 1929, p. 102).

STATEMENT.

The facts, as stipulated (R. 27), may be summarized as follows:

Mrs. Blake died on July 12, 1935, a resident of Massachusetts (Stip. § 2, R. 28), leaving a last will and testament which was admitted to probate by the Probate Court of

the County of Suffolk, Massachusetts, on October 21, 1935 (Stip. § 9, R. 36).

On February 14, 1921, January 11, 1929, and May 20, 1935 (respectively), Mrs. Blake, while a resident of Massachusetts, created three inter vivos trusts, with St. Louis Union Trust Company, as trustee [Stip. §§ 3, 4 and 5 (R. 29-32); Exhibit 1 (R. 43); Exhibit 5 (R. 63); Exhibit 6 (R. 66)].

Under such trusts, respondent trustees held, at the death of Mrs. Blake, property then valued as follows:

Trust of February 14, 1921	$1,513,864.51
Trust of January 11, 1929	136,472.73
Trust of May 20, 1935	200,452.53
Total	$1,850,789.77

(Stip. § 8, R. 35.)

The assets of such trusts consisted, at the time of their creation and at the time of Mrs. Blake's death, exclusively of intangible personal property, i. e., stocks, bonds, notes, etc. (Stip. § 8, R. 35).

Mrs. Blake reserved the right to receive the net income of the various trust estates during her lifetime (R. 45, 64, 67) and the rights to revoke those dated in 1921 and 1935 (R. 56, 70). She never exercised those rights to revoke (Stip. § 6, R. 32-33).

The trust instruments made a complete disposition of the income and principal of the trusts, providing that upon the death of Mrs. Blake certain special trust estates be set up for the benefit of individuals, with the residue (and remainders after the termination of some of the special trusts) going to charitable institutions existing under the laws of Missouri and under the laws of other states.

From the time of the creation of the trusts to the time of Mrs. Blake's death, the St. Louis Union Trust Company had possession of and managed and controlled the trust estates (Stip. § 7, R. 33). The property was in the possession of St. Louis Union Trust Company in Missouri when Mrs. Blake died, and upon her death the trustees continued to carry out the terms of the trusts (Stip. § 8, R. 35).

The Massachusetts inheritance tax law in effect at the time of Mrs. Blake's death (now set forth in General Laws of Massachusetts, Chapter 65) is set forth as Exhibit 13 to the Stipulation (R. 86-89). It taxes all property within the jurisdiction of Massachusetts belonging to inhabitants of Massachusetts and all real estate and tangible personal property within Massachusetts belonging to nonresidents, with exceptions not here material. It does not tax intangible personal property within the jurisdiction of Massachusetts belonging to nonresident decedents. No such tax has been imposed since 1929 (Stip. § 12, R. 39).

The administrative practice of the tax authorities in Massachusetts is in accordance with the statute. Under such practice, intangible personal property of a nonresident decedent, although held by a Massachusetts trust company upon revocable trust created by the decedent, is not taxed [R. 40; Exhibit 15 (R. 91); Exhibit 16 (R. 92)].

Massachusetts, as the state of the domicile of Mrs. Blake, asserted the right to tax the devolution of the trust properties here involved on the ground that they constituted gifts to take effect at or after death. It brought suit upon its claim in the United States District Court for the Eastern District of Missouri. Pursuant to stipulation of settlement of such suit, the trustees paid $89,050.00 Massachusetts inheritance taxes in respect of the trust properties here involved (Stip. § 11, R. 37-39).

The history of the instant litigation may be summarized as follows:

On November 8, 1939, the respondents, as trustees of the three trust estates created by Madge Barney Blake, brought a statutory proceeding (under Section 598, R. S. Mo. 1929) in the Circuit Court of the City of St. Louis, Missouri, against the State of Missouri to quiet title to the trust property against the lien or claim of lien of the State of Missouri for inheritance taxes (R. 2). The action was brought on the ground, among others, stated in the petition (R. 10, 13-14), that the trust property (being exclusively intangible personal property) was exempt from inheritance taxes under the reciprocal exemption contained in Section 576, R. S. Mo. 1929, because Mrs. Blake was a resident of Massachusetts, and Massachusetts was a state which, at the time of her death, did not impose an inheritance tax with respect to intangible personal property belonging to decedents who were residents of Missouri.

On July 29, 1940, the cause was submitted upon a stipulation of facts (R. 27).

On December 12, 1940, the Circuit Court entered its judgment or decree (R. 22), wherein it denied the relief prayed in plaintiffs' petition and rendered judgment in favor of the State of Missouri and against the trustees for inheritance taxes in the amount of $182,349.69. In such decree it held (a) that the reciprocity statute violated Article II, Section 30 (due process clause), and Article X, Section 3 (uniformity clause) of the Missouri Constitution; (b) that the reciprocity statute did not apply because the property in question had acquired a business situs in Missouri; and (c) that any exemption which was conferred by the statute was withdrawn by the repeal (subsequent to the death of Mrs. Blake) of the reciprocity statute.

From such decision the trustees appealed to the Supreme Court of Missouri (R. 25-26).

On July 21, 1941, the Supreme Court of Missouri, in Division No. 1 thereof, entered its judgment (R. 115), reversing and annulling the judgment of the Circuit Court and remanding the cause for further proceedings in conformity with its opinion (R. 116), wherein it held that none of the grounds upon which the Circuit Court's judgment was based were sustainable, and that the trustees were entitled to the benefits of the reciprocal exemption law.

On July 31, 1941, the State filed a motion for a rehearing (R. 126) and a motion to transfer to the Court en Banc (R. 132), in each of which the State claimed that a federal question was involved. The trustees filed separate suggestions in opposition to each of the motions (R. 133, 136), wherein they contended that such federal question was not involved in the case. On October 30, 1941, the Supreme Court of Missouri overruled both of the motions filed by the State (R. 139).

Further facts in relation to the effect of such proceedings in the Supreme Court of Missouri, subsequent to the rendition of its judgment, will be referred to under Point I of the argument herein, and, for sake of brevity, are omitted here.

ARGUMENT.

Summary of Argument.

1. No federal question is involved in this case because none was raised or decided in the state court. The decree of the Circuit Court was not based upon federal grounds. The State's brief in the Supreme Court of Missouri did not raise a federal question. The final ruling of the Supreme Court of Missouri was to the effect that none was involved.

2. Neither petitioner is a party entitled to contend that the Missouri reciprocity statute violated the Fourteenth Amendment. The petitioners have no individual rights protected by the Amendment. They may not act as champions of the rights of others.

3. Under the applicable decisions of this court, the reciprocal exemption law did not violate the Fourteenth Amendment, and no federal question of substance is, or may be, involved. The classification of the subjects of taxation made by the statute is supported by abundant reason resting upon comity between the states.

I.

No Federal Question Is Involved in this Case Because None Was Raised or Decided in the State Court.

The Attorney-General, one of the petitioners here, was not a party to the case below, and, of course, raised no federal question.

Although the State, in its answer filed in the Circuit Court (R. 17-18), alleged, among other defenses, that the reciprocity statute violated the Fourteenth Amendment to the Constitution of the United States, it did not press its

claim under the Federal Constitution, and the decree of the Circuit Court (R. 22-26) did not contain a conclusion that the reciprocity statute violated the Amendment nor a conclusion upon any other federal question.

Upon appeal by the trustees to the Supreme Court of Missouri, the State, as respondent there, did not assign error on the part of the trial court in not recognizing the federal claim, nor did it contend in the appellate court (prior to the decision therein) that the trial court's denial to the trustees of the benefits of the reciprocity statute was sustainable because that statute violated the Fourteenth Amendment.

The State's brief in the Supreme Court of Missouri, copies of which are herewith filed as an appendix, completely omitted any reference to the Federal Constitution and merely asserted with respect of the alleged invalidity of the reciprocity act that:

> "B. Section 576, supra, is a violation of the provisions of *our Constitution.*
>
> "1. Article 2, Section 30, is violated * * *.
>
> "2. Article 10, Section 3, is violated."

(See State's brief, pp. 6-7, cf. pp. 39-49.)

Such reliance by the State, in the Supreme Court of Missouri, upon provisions of the state constitution is not tantamount to invoking the equivalent clauses of the Federal Constitution and does not bring a federal question into issue. *Levy v. Superior Court of San Francisco*, 167 U. S. 175; *Kipley v. Illinois ex rel. Akin*, 170 U. S. 182, 187; *Gibbes v. Zimmerman*, 290 U. S. 326.

It thus appears that the State did not, in a timely manner, raise a federal question in the Supreme Court of Missouri, but elected to present its case in such manner as to

invoke a decision upon state grounds only, and so as to preclude, if it were to be successful, review by this court upon petition by the trustees.

The failure to raise the federal question in the Supreme Court of Missouri is decisive here. To sustain the jurisdiction of this court, this court must be able to see from the whole record "that a provision of the Constitution or act of Congress is relied upon" (*Dewey v. Des Moines*, 173 U. S. 193, 198; *Moore v. Mississippi*, 88 U. S. 636).

The petitioners attempt (Sup. Br. p. 10) to sustain their right to invoke the jurisdiction of this court by contending that the Supreme Court of Missouri in its opinion assumed that a federal question had been raised by the State. They thus attempt to correct their failure to raise the point by reliance upon consideration to which they were not upon the record entitled.

The Supreme Court of Missouri, however, by its subsequent action, removed the basis for a contention that a federal question was involved in its decision.

Upon the rendition of the opinion of the Supreme Court of Missouri (in Division No. 1 thereof), adverse to the contentions of the State, the State filed a motion for transfer of the cause to the court en banc, alleging that a federal question was involved (R. 132).[1]

The trustees filed suggestions in opposition to the motion for transfer (R. 133) on the ground that the federal question had been abandoned, and that, under the state practice, the court would not retain jurisdiction of a cause

[1] Such attempt to revivify a point that had been abandoned and not argued before Division No. 1 was ineffective, for, under the decisions of this court, the injection of a federal question is not timely when first appearing in the State Supreme Court upon motion for rehearing (*Herndon v. Georgia*, 295 U. S. 441; *Missouri ex rel. Missouri Insurance Company v. Gehner*, 281 U. S. 313, 320; *Citizens National Bank v. Durr*, 257 U. S. 99), or upon motion to transfer to the court en banc (*Bobb v. Jamison*, 155 U. S. 416; *Duncan v. Missouri*, 152 U. S. 377).

on the basis of a constitutional question after such question had been abandoned. *Village of Grandview v. McElroy*, 318 Mo. 135, 138; *Cooper County Bank v. Bank of Bunceton*, 310 Mo. 519; *Moore v. United Railways Co.*, 256 Mo. 165; *Botts v. Railroad*, 248 Mo. 56, 61.

The motion for transfer to the court en banc was in due course overruled (R. 139).

The overruling of this motion constituted an adjudication by the Supreme Court of Missouri that no federal question was involved. This is true because under the Missouri Constitution (Sec. 4 of the Amendment of 1890 to Art. VI)[2] a transfer to the court en banc is mandatory when a federal question is involved. Under the state practice, the action of the court in denying a motion for transfer to the court en banc, in a case where such transfer is claimed on the basis of involvement of a federal question, constitutes an adjudication that no federal question was involved in the decision of the court in Division. *State v. Duestrow*, 137 Mo. 44, 96.

This court refrains from assuming jurisdiction where the highest state court has declined to consider the federal question alleged to be involved because not properly raised. *Pennsylvania Railroad Company v. Illinois Brick Company*, 297 U. S. 447, 463.

The principles here invoked are but special applications of the general rule that where the constitutionality of a state statute has been upheld in the highest court of the

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2 The constitutional provision reads as follows:

"Sec. 4. Case transferred to court in banc, when.—When the judges of a division are equally divided in opinion in a cause, or when a judge of a division dissents from the opinion therein, or when a federal question is involved, the cause, on the application of the losing party, shall be transferred to the court for its decision; or when a division in which a cause is pending shall so order, the cause shall be transferred to the court for its decision."

state, this court refuses to consider grounds of attack not raised or decided in the state court.[3]

Having consciously elected to seek a decision in its favor upon exclusively state grounds, the State may not, upon adverse decision by the state court, seek review by this court.

II.

Neither Petitioner Is a Party Entitled to Contend That The Missouri Reciprocity Statute Violates the Fourteenth Amendment.

This is not a case in which a taxpayer resists the payment of a tax imposed by a state law on the ground that the law discriminates against him and therefore violates the Fourteenth Amendment.

On the contrary, this is a case in which a state statute declares that the tax "*shall not be payable*" and in which the State and its Attorney-General seek to impose a tax by invalidating such exemption statute.

The Missouri reciprocity statute, under which no tax is to be imposed under the circumstances of this case, was enacted by the legislature, approved by the Governor, and declared by the Supreme Court of Missouri in this case to be a valid exercise of the legislative power so far as the state constitution is concerned. Thus all three departments of the government of the State of Missouri have joined in formulating and sustaining the statute as part of the fiscal policy of the state and as expressing the will of the state.

Now the Attorney-General, purporting to act in the name of the State and also in his own official capacity,

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3 *McGoldrick v. Compagnie Generale Transatlantique*, 309 U. S. 430, 434; *New York ex rel. Cohn v. Graves*, 300 U. S. 308, 317; *Whitney v. California*, 274 U. S. 357, 362, 363; *Keokuk & H. Bridge Co. v. Illinois*, 175 U. S. 626, 633; *Dewey v. Des Moines*, 173 U. S. 193.

asserts that this statute is void because it deprives some one of due process or denies to some one equal protection of the laws in violation of the Fourteenth Amendment. He assumes, without express authority, the right to make such assertion in contradiction of the will of the state as expressed by law.

However, upon the record, neither petitioner is a party entitled to invoke the Fourteenth Amendment, because neither has individual rights which are thereby protected, and neither has capacity to act as the champion of the rights of others whose rights are thereby protected. In the absence of such a showing the constitutional question is moot, and this court would be without jurisdiction, for federal questions, upon which a party seeks review by this court, "must be real, the controversies they present must be substantial, not only from the nature of the principles invoked, but from the relation of the party to them by whom they are invoked" (*City of Lampasas v. Bell*, 180 U. S. 276, 284; see also *Massachusetts v. Mellon*, 262 U. S. 447).

A. *Neither the State of Missouri nor its Attorney-General Has Individual Rights Protected by the Fourteenth Amendment.*

The Fourteenth Amendment forbids a state to exercise its own power so as to deprive any person of due process or of equal protection of the laws. It was intended as a guarantee to secure the individual from the arbitrary exercise of the powers of government.

There is nothing in the Amendment which forbids the State of Missouri from depriving or denying itself. The Amendment leaves unincumbered the power of the state to dispose of its own as it pleases.

No suggestion is contained in the petition for writ or

supporting brief that any individual rights of the Attorney General are here at issue.

B. *Neither Petitioner Can Assert that the Reciprocity Statute Violates the Rights of Others and Act as Champion of those Rights.*

The petitioners, having no direct interest protected by the Fourteenth Amendment, so as to be entitled to invoke it on their own behalf, may not invoke it on behalf of others.

The principle on which rests the right of this court to declare a state statute void is that, in a real and actual controversy between parties before the court, the rights asserted depend upon the validity of a statute and the contention is made by a party thereby adversely affected that such statute infringes his constitutional rights.

The contention that a state statute violates the Fourteenth Amendment is available only to the injured party. Neither the state nor state officials under such rule have legal standing to attack the constitutionality of a state statute.

Thus it was said in *Columbus and Greenville Railway Company v. Miller*, 283 U. S. 96, 99:

> "While, so far as state practice is concerned, the authority of a public officer to assail in the courts of the state the constitutional validity of a state statute is a local question, this fact does not alter the fundamental principle, governing the determination of the Federal question by this court, that the protection of the 14th Amendment against state action is only for the benefit of those who are injured through the invasions of personal or property rights or through the discriminations which the Amendment forbids. The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been de-

> prived of his property without due process of law or denied the equal protection of the laws."

And it was said in the concurring opinion in *Coleman v. Miller*, 307 U. S. 433, 466:

> "Again, this court has consistently held that the interest of a state official in vindicating the Constitution of the United States gives him no legal standing here to attack the constitutionality of a state statute in order to avoid compliance with it."

Similiter, Caffrey v. Oklahoma ex rel. Cunningham, 177 U. S. 346; *City of Lampasas v. Bell*, 180 U. S. 276; *Smith v. Indiana ex rel. Lewis*, 191 U. S. 138; *Braxton County Court v. West Virginia ex rel. Dillon*, 208 U. S. 192; *Stewart v. Kansas City*, 239 U. S. 14.

Nor may the constitutional rights claimed be asserted by the state on behalf of its own citizens. *Florida v. Mellon*, 273 U. S. 12.

Indeed, when Massachusetts, in relation to this very controversy, asserted in this court that Missouri was improperly withholding from a resident of Massachusetts the benefits of the Missouri reciprocity statute, this court, in *Massachusetts v. Missouri*, 308 U. S. 1, 17, refused to permit Massachusetts to champion the rights of its citizens, and relied upon *Oklahoma v. Atchison, Topeka and Santa Fe Railway Company*, 220 U. S. 277.

But even if the petitioners were permitted to act as champions for citizens of Missouri, or of some nonreciprocal state, their assertion on behalf of such citizens would necessarily be that the discrimination which renders the statute invalid is the imposition of a tax upon them, thus striking down the entire taxing law. Yet what the petitioners purport to seek here is the very reverse, namely, the imposition of a tax in the absence of a taxing statute.

Thus the fallacy of petitioners' position is clear. They assert a discrimination against persons not involved in this litigation, which, if established, would defeat the tax as to such persons, and yet contend that the result must be the imposition of a tax upon the respondents who were expressly exempted from tax.

We submit that such a position on the part of petitioners, even if they had the capacity to maintain it, could raise no real federal question, i. e., one under which the result would be to change the decision of the Supreme Court of Missouri, that there is no lien upon the property in question for Missouri inheritance taxes.

III.

Under the Applicable Decisions of this Court, the Reciprocal Exemption Law Did Not Violate the Fourteenth Amendment and No Federal Question of Substance Is or May Be Involved.

Unless the petitioners are able to demonstrate that the classification of subjects of taxation made by the reciprocity statute is purely arbitrary and may be supported by no rational basis, the federal question here involved, under the Fourteenth Amendment, is without substance.

The test of constitutionality to be employed is clear, for this court has consistently held that the selection by a state legislature of a particular class of subjects for taxation or exemption does not violate the Fourteenth Amendment, if there is any reasonable ground for the classification, or if there is any rational basis for the distinction on which it is based. The cases upon this proposition are numerous, and only a few of the more recent of them will be here referred to: *Carmichael v. Southern Coal and Coke Company*, 301 U. S. 495, 509; *Whitney v. State Tax Commission of New York*, 309 U. S. 530, 542; *Madden v. Ken-*

tucky, 309 U. S. 83, 88; *Caskey Baking Company, Inc., v. Virginia*, 313 U. S. 117.

The State, in invoking the Fourteenth Amendment as invalidating its reciprocity statute, must assume the burden of negativing every conceivable basis which might support it. *Madden v. Kentucky*, supra.

This burden it does not sustain by demonstrating merely that the reciprocity statute results in a *difference* in treatment as between beneficiaries who take from a decedent who resided in a reciprocating state and beneficiaries who take from one who resided in a state which did not reciprocate. Classification presupposes that there are *differences*.

Nor is it material, under the Fourteenth Amendment, that the classification here involved is one based upon the law of the state of the residence of the decedent, while other classifications of the inheritance tax law are based upon the relationships of the beneficiaries. In *Carmichael v. Southern Coal and Coke Company*, 301 U. S. 495, 509, this court, referring to exemptions from the operation of a tax imposed upon members of a class, said:

> "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. * * *"

Nor is there anything constitutionally objectionable in letting the tax or want of tax rest upon the tax policy of another jurisdiction. The 80 per cent credit under the federal Estate Tax Law so rests and is valid. *Florida v. Mellon*, 273 U. S. 12. Upon the same basis rest retaliatory foreign insurance company laws, which have been sus-

tained by this court (*Fire Association of Philadelphia v. New York*, 119 U. S. 110) and numerous state courts[4] against the objection that they were discriminatory as well as against other constitutional objections.

The reciprocity statute is grounded upon reason and designed to promote uniformity and equality, as is clearly shown by the history and purposes of the statute.

Blackstone v. Miller, 188 U. S. 189—wherein it was held that two or more states might, without infringing constitutional limitations, impose a tax upon the death of a decedent in respect of the same property—was only shortly decided when there came from Mr. Justices Holmes, in *Kidd v. Alabama*, 188 U. S. 730, 732, the suggestion:

> "No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the Constitution of the United States does not go so far."

Under the impetus of *Blackstone v. Miller*, thirty-five states had, prior to 1930, enacted statutes which either exempted intangibles of nonresidents entirely, or which granted reciprocal exemptions (*Farmers Loan and Trust Company v. Minnesota*, 280 U. S. 204).

Unquestionably, one of the reasons for the adoption of the policy of complete or reciprocal exemption was to stimulate the business of local financial institutions. Under a system of multiple taxation, capital would be restrained from venturing away from the state of the domicile of the owner by the prospect of multiple taxation

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[4] *Pacific Mutual Life Insurance Co. v. Lowe*, 354 Ill. 398; *Home Insurance Co. v. Swigert*, 104 Ill. 653; *State ex rel. Baldwin v. Insurance Co.*, 115 Ind. 257; *Employers Casualty Company v. Hobbs*, 107 Pac. (2d) 715, 716; *Clay v. Dixie Fire Insurance Co.*, 168 Ky. 315; *State v. Insurance Co.*, 71 Neb. 320. See, also, note in 91 A. L. R. 795, 798.

upon the same property, if it remained beyond the boundaries of that state when the owner died.

The result of the widespread action of the states was to produce a common scheme whereby each state, as between reciprocity states, reserved the exclusive right to tax the intangibles of residents and relinquished the right to tax the intangibles of nonresidents. Thus, uniformity and equality of taxation were approached, and the discrimination between property which was sent into other states and taxed twice, and property that was kept at home and taxed once, was eliminated.

These considerations were before the Missouri Legislature when in 1929 it enacted the reciprocity statute here involved.

During the period following *Blackstone v. Miller*, questions of construction of the reciprocity statutes have been before the courts of last resort in a number of states, and their validity has been uniformly assumed.[5]

In view of the coherent system of uniform taxation in which the reciprocity statute was designed to play its part, it cannot seriously be contended that there was no reason whatsoever for the enactment of that statute or that it was the result of whim or caprice. The fact that similar statutes were enacted in so many states plainly shows that there was an almost universally recognized rational basis for the legislation. Such wide acceptance of the tax policy shows clearly that there is no substantial question involved in this case.

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5 *Fisher v. Brucker*, 41 F. (2d) 774; *State of Kansas ex rel. John S. Dawson v. Frank K. Davis et al., Administrators*, 88 Kan. 849; *Bliss v. Bliss*, 221 Mass. 201; *State of Minnesota ex rel. Graff v. Probate Court of the County of St. Louis*, 128 Minn. 371; *City Bank Farmers Trust Company v. New York Central Railroad Company*, 253 N. Y. 49; *Commonwealth v. Farmers Loan and Trust Company*, 301 Pa. 114; *In the Matter of the Estate of Elizabeth Eilermann, Deceased*, 179 Wash. 15. See, also, note in 69 A. L. R. 949.

The contention of petitioners contemplates an unthinkable destruction of taxing schemes developed upon principles of comity by the co-ordinated effort of the majority of the states of the union. Were the contention one of substance, its implications might indeed be broad.

But it lacks substance because it confronts the reasoned consideration of legislatures throughout the country.

Conclusion.

We submit that the writ should be denied for the following reasons:

(1) No federal question was raised before the Supreme Court of Missouri or was decided by that Court. The denial of the motion to transfer to the court en banc is conclusive.

(2) Neither petitioner has any right to raise a federal question for itself or himself, or on behalf of another, nor is a federal question so raised or involved as to afford a basis for review by this Court.

(3) The subject matter of this litigation does not raise any real or substantial federal question, but only questions long and uniformly decided against the contentions of the petitioners.

Respectfully submitted,

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FILED
DEC 26 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 797.

STATE OF MISSOURI and ROY McKITTRICK, as Attorney General of Missouri, Petitioners,

vs.

ST. LOUIS UNION TRUST COMPANY, Trustee Under Indenture of Trust Made February 14, 1921, by Madge Barney Blake,

ST. LOUIS UNION TRUST COMPANY, Trustee Under Indenture of Trust Made January 11, 1929, by Madge Barney Blake,

ST. LOUIS UNION TRUST COMPANY, CHARLES B. MALOY and CLARENCE E. MALOY, Trustees Under Indenture of Trust Made May 20, 1935, by Madge Barney Blake, Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Missouri.

APPENDIX

To Brief for the Respondents in Opposition.

COPY OF BRIEF FILED BY THE STATE IN THE SUPREME COURT OF MISSOURI.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.